

STATE OF MICHIGAN
COURT OF APPEALS

ROOSEVELT THOMAS,

Plaintiff-Appellant,

v

WEATHERSPOON, LLC,

Defendant-Appellee.

UNPUBLISHED

June 19, 2014

No. 315324

Cass Circuit Court

LC No. 10-000706-CH

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

In this property dispute, plaintiff appeals as of right the trial court's order quieting title to three disputed parcels of land by awarding title to one parcel to defendant and dividing the other two parcels between plaintiff and defendant. Because the trial court did not abuse its discretion in admitting into evidence documents relating to the parties' chains of title and the trial court did not err in its division of the subject property, we affirm.

Plaintiff and defendant own adjoining properties located on Paradise Lake in Calvin Township, Cass County. The present lawsuit began when plaintiff filed suit, seeking to quiet title on disputed portions of property, consisting of three lots known respectively as: A, B, and C. Parcel B was originally part of a portion of land known as "Out Lot A" which was included on the plat for property known as Paradise Lake Resort. Defendant acquired parcel B in 1995, and the land comprising parcel B was specifically included in the legal description of defendant's property. In contrast, parcels A and C were not included in either defendant's or plaintiff's legal description. Plaintiff owns property to the south of both defendant's land and the disputed parcels.

In filing the present suit, plaintiff sought to claim ownership of parcels A, B, and C on the basis of adverse possession or acquiescence. In response, defendant also asserted ownership of the dispute parcels. Defendant did not file a counterclaim in this regard, but did file an answer

which included several affirmative defenses, among them an assertion of adverse possession.¹ Defendant also asserted possession of record title to parcel B.

Following a bench trial, and after personally viewing the disputed property on two occasions, the trial court entered a detailed decision resolving the parties' property dispute. Ultimately, the trial court awarded parcel C to defendant on a theory of adverse possession. Finding that the parties had acquiesced to a boundary between their properties different than the legal boundary, the trial court divided parcels A and B into northern and southern portions based on the acquiesced boundary, awarding the northern portion to defendant and the southern to plaintiff.

On appeal, plaintiff first contends that the trial court abused its discretion in allowing the admission of defendant's exhibits B-1 and B-2, which related to defendant's chain of title and plaintiff's chain of title respectively. At trial, and on appeal, defendant has responded that the documents were admissible because they were attached to plaintiff's complaint and, in regards to B-2, introduced by plaintiff at trial. Because plaintiff offered a timely and specific objection to the introduction of the exhibits at trial, plaintiff's claim has been preserved for review. MRE 103(a)(1). We review a trial court's evidentiary decisions for an abuse of discretion. *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Id.* However, when an evidentiary issue involves a preliminary question of law, review of the preliminary question of law is de novo. *Barnett v Hidalgo*, 478 Mich 151, 159; 732 NW2d 472 (2007). A trial court abuses its discretion by admitting evidence that is inadmissible as a matter of law. *Id.*

Relevant to the parties' arguments, actions brought to determine interests in land are governed by MCR 3.411, which states in pertinent part:

(C) Written Evidence of Title to Be Referred to in Pleadings.

- (1) Written evidence of title may not be introduced at trial unless it has been sufficiently referred to in the pleadings in accordance with this rule.
- (2) The plaintiff must attach to the complaint, and the defendant must attach to the answer, a statement of the title on which the pleader relies, showing from whom the title was obtained and the page and book where it appears of record.

Considering the plain language of the court rule, we conclude that, contrary to plaintiff's arguments, a party's failure to attach a document as required by MCR 3.411(C)(2) does not necessarily preclude its admission under MCR 3.411(C)(1). This is so because MCR 3.411(C)(1) prohibits written evidence of title only if it has not been "sufficiently referred to in the pleadings in accordance with this rule." The phrase "the pleadings" is general in nature, not

¹ The trial court determined that, by implied consent, the parties had agreed to try the issue of defendant's ownership of the disputed properties. For this reason, the trial court treated defendant's affirmative defenses as a counterclaim to quiet title.

specific to either party's pleadings in particular. That is, the rule does not condition the evidence's admissibility on a proponent's attachment of the document to his own pleading in accordance with the rule. Instead, to satisfy MCR 3.411(C)(1), the document need only be "sufficiently referred to in the pleadings" In short, given the general reference to "the pleadings," where either party attaches evidence of title to his or her pleadings as required by MCR 3.411(C)(2), it has generally been "sufficiently referred to in the pleadings in accordance with this rule" such that its admission at trial would not be precluded by MCR 3.411(C)(1).

Accordingly, regarding the documents at issue in the present case, to the extent that the contents of B-1 and B-2 were attached to plaintiff's complaint and, in the case of B-2, introduced by plaintiff at trial, we conclude that the trial court did not abuse its discretion in admitting the exhibits because those documents were sufficiently referred to in the pleadings in accordance with the court rule. This seems particularly true in this case where, although defendant did not attach documents to its answer, defendant did reference some of plaintiff's attachments in the contents of its answer, specifically acknowledging some of those documents as part of its own chain of title. Overall, on these facts, the trial court did not abuse its discretion in allowing defendant to admit documents at trial which were attached to plaintiff's pleadings. See MCR 3.411(C)(1).

We note, however, that B-1 and B-2 both included documents not attached to plaintiff's complaint. These additional documents consisted of a more extensive chain of title regarding defendant's property and a mortgage recorded against plaintiff's property. To the extent that these additional documents were included in defendant's exhibits, the admission of these documents involving written evidence of title that had not been referenced in or attached to the pleadings was an error of law and thus an abuse of discretion. See MCR 3.411(C)(1).

Nevertheless, even if admission of some of the documents was in error, plaintiff is not entitled to relief. "[A]ny error in the admission or exclusion of evidence will not warrant appellate relief 'unless refusal to take this action appears . . . inconsistent with substantial justice,' or affects 'a substantial right of the [opposing] party.'" *Craig ex rel Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004), citing MCR 2.613(A) and MRE 103(a). We cannot see that plaintiff's substantial rights or the interests of justice are implicated by the admission of the documents at issue relating to the parties' chain of title because the legal chain of title relating to the properties was never contested. Plaintiff sought to establish ownership, not through record title, but through the operation of adverse possession and acquiescence. Indeed, plaintiff fully acknowledged that defendant held marketable title to parcel B, and that neither parcels A or C were included in either parties' chain of title. On these facts, where the parties did not dispute record ownership and plaintiff was fully cognizant of the parties' record title to their respective properties, the admission of documents in the parties' chain of title did not impact plaintiff's substantial rights and substantial justice does not require that he receive relief on appeal. See *Craig ex rel Craig*, 471 Mich at 76.

Next, plaintiff challenges the trial court's division of the disputed properties, arguing specifically that he obtained parcels A and B by virtue of acquiescence and "Parcel C for the reason that Parcel C is not part of the Defendant's Tax Deed" We review decisions regarding equitable claims, including actions to quiet title, de novo. *Killips v Mannisto*, 244

Mich App 256, 258; 624 NW2d 224 (2001). A trial court's factual findings are reviewed for clear error. MCR 2.613(C).

To establish acquiescence by operation of the statutory period, there need merely be a showing that "parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary." *Mason v City of Menominee*, 282 Mich App 525, 529; 766 NW2d 888 (2009). The statutory period for acquiescence is fifteen years, and it can include tacking of a predecessor's period of possession. *Id.*; MCL 600.5801(4). The dispositive inquiry is whether a preponderance of the "evidence presented establishes that the parties *treated* a particular boundary line as the property line." *Walters v Snyder (After Remand)*, 239 Mich App 453, 458; 608 NW2d 97 (2000).

In this case, after listening to testimony and visiting the property on two occasions, the trial court determined that the parties and their predecessors had long acquiesced to a boundary line which transects parcels A and B. This factual determination regarding the parties' treatment of the boundary line was not clearly erroneous given the evidence offered at trial. In this regard, a preponderance of the evidence showed that since the 1950s the owners of the property had agreed to the snow fence on parcel B as a boundary between the properties where the fence existed. For instance, the grandson of defendant's predecessors (the Grays) testified that he had understood the fence to be a boundary between the properties, and he further explained that the boundary then extended along the tree line all the way down to the water.

Consistent with this description, moving westward toward the lake, after the snow fence ended, the trial court determined that the property boundary was set by the northern edge of the lawn maintained by plaintiff's predecessors, the Isbells. In support of this determination, there was ample testimony from the Weatherspoon brothers regarding the terrain of the property in general, and, more specifically, the portions of land that they mowed for the Isbells as children which they consistently described as south of the willow trees. They also described the brush-like nature of the property north of the line the Isbells maintained. The Grays' grandson similarly described brush separating the two properties and he noted that Isbell's property was well-maintained. Consistent with this historical conduct, in more recent times, the Weatherspoons described their efforts to maintain a path to the lake when they assumed ownership of the property, and later their excavation of the property at the time they demolished the tavern. Given this testimony regarding the owners' historical care for the property, it was not clearly erroneous for the trial court to determine that they parties had acquiesced to a boundary line consistent with the Isbells' care for their property.

In ascertaining precisely where to draw this line, the trial court made use of landmarks on the property which were referenced throughout the trial testimony. For instance, the portion of land allotted to plaintiff included the retaining wall made up of railroad slats which matched those found elsewhere on his property. Using the retaining wall as a northern boundary of plaintiff's property, the trial court extended the boundary westward toward the lake by way of the bushes replacing the hickory tree felled during defendant's construction and then between the two willows to a point on the lake marked by the northern edge of plaintiff's shore station. The landmarks were not arbitrary, but were instead based on the testimony of witnesses describing their understanding of boundaries and the parties' respective use of the properties, and the importance of these landmarks was further informed by the trial court's opportunity to personally

view the property in question. On the whole, plaintiff has not shown clear error in the trial court's factual findings or error in the trial court's application of acquiescence. For these reasons, plaintiff is not entitled to relief.

Turning to plaintiff's claims regarding parcel C, plaintiff has asserted only that he is somehow entitled to parcel C because it was not included in defendant's deed. In making this argument, plaintiff ignores the fact that the trial court did not award parcel C to defendant because it was contained in defendant's deed. Rather, the trial court quieted title in defendant's favor based on a finding of adverse possession. To establish title by virtue of adverse possession, defendant was not required to show that a description of the property was contained in his deed. See generally *Beach v Twp of Lima*, 489 Mich 99, 106; 802 NW2d 1 (2011). Plaintiff's arguments regarding defendant's deed are thus without merit. Having failed to show error in the trial court's finding of adverse possession, plaintiff is not entitled to relief regarding parcel C.

Affirmed. Defendant, having prevailed in full, may tax costs pursuant to MCR 7.219.

/s/ Amy Ronayne Krause
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck